



GAIL FARBER, Director

## COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331

<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

November 05, 2014

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

44 November 5, 2014

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**APPROVE COOPERATIVE AGREEMENT REGARDING CONSTRUCTION,  
OPERATION, AND MAINTENANCE OF A BOX CULVERT STRUCTURE ON  
THE RUBIO WASH CHANNEL BETWEEN THE COUNTY OF LOS ANGELES,  
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,  
ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY, AND  
UNION PACIFIC RAILROAD IN THE UNINCORPORATED COUNTY  
COMMUNITY OF EAST SAN GABRIEL AND THE CITY OF SAN GABRIEL  
(SUPERVISORIAL DISTRICT 5)  
(3 VOTES)**

### **SUBJECT**

This action is to approve a cooperative agreement between the County, the Los Angeles County Flood Control District, the Alameda Corridor-East Construction Authority, and the Union Pacific Railroad covering construction, operation, and maintenance of the Rubio Wash channel and box culvert constructed as part of the San Gabriel Trench project in the unincorporated County community of East San Gabriel and the City of San Gabriel.

**IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE  
COUNTY OF LOS ANGELES AND AS THE GOVERNING BODY OF THE LOS ANGELES  
COUNTY FLOOD CONTROL DISTRICT:**

Approve and instruct the Chairman of the Board to sign the cooperative agreement between the County, the Los Angeles County Flood Control District, the Alameda Corridor-East Construction Authority, and the Union Pacific Railroad covering construction, operation, and maintenance of the Rubio Wash channel and box culvert constructed as part of the San Gabriel Trench project in the unincorporated County community of East San Gabriel and the City of San Gabriel.

## **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to execute the enclosed cooperative agreement between the County, the District, the Alameda Corridor East (ACE) Construction Authority, and the Union Pacific Railroad (UPRR) covering construction, operation, and maintenance of the Rubio Wash channel and box culvert constructed as part of the San Gabriel Trench project in the unincorporated County community of East San Gabriel and the City of San Gabriel.

## **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provisions of Operational Effectiveness/Fiscal Sustainability (Goal 1) and Integrated Services Delivery (Goal 3). This project will improve traffic flow and safety, enhance the community environment for County residents, and foster economic vitality. The agreement will ensure fiscal responsibility by clearly delineating maintenance responsibilities for all agencies.

## **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

There is no cost to the County and the District to enter into this agreement. ACE Construction Authority is responsible for all costs of constructing and maintaining the box culvert until it is accepted by UPRR and the District. Construction is scheduled to be completed in Fiscal Year 2016-17. Following acceptance, the funds to finance the drainage operation, removal of trash and debris, and graffiti abatement for the box culvert will be included in the annual Flood Control District Fund budget process.

## **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The agreement has been reviewed and approved, as to form, by County Counsel, ACE Construction Authority, and UPRR.

The District currently maintains the Rubio Wash channel at this location, while UPRR maintains a railroad bridge crossing over the channel. ACE Construction Authority proposes lowering the existing UPRR tracks in a below grade trench and eliminating four railroad at-grade crossings. The Rubio Wash channel will be lowered and reconstructed. The existing railroad bridge and open channel will be replaced by a box culvert. The agreement provides that following acceptance of the project by the District, UPRR will be responsible for the structural maintenance, repair, and replacement of the box culvert and the District will be responsible for drainage operation, removal of trash and debris, and graffiti abatement in the channel and inside the box culvert.

## **ENVIRONMENTAL DOCUMENTATION**

On October 5, 2010, Agenda Item 31, acting as a responsible agency, the Board certified the environmental document for the ACE Construction Authority San Gabriel Trench project. The proposed Rubio Wash box culvert is part of the San Gabriel Trench project. The Environmental Impact Report by ACE Construction Authority, as the lead agency, found that on the basis of the whole record, the significant adverse effects of the San Gabriel Trench project have either been reduced to an acceptable level or are outweighed by the specific consideration of the project as

The Honorable Board of Supervisors

11/5/2014

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outlined in the findings of fact and statement of overriding considerations in accordance with the provisions of the California Environmental Quality Act.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The recommended action will improve the quality of life for County residents traveling in the San Gabriel Valley through enhanced safety, increased mobility, and improved air quality.

**CONCLUSION**

Please return one adopted copy of this letter and five originals of the cooperative agreement to the Department of Public Works, Programs Development Division.

Respectfully submitted,

A handwritten signature in black ink that reads "Gail Farber". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

GAIL FARBER

Director

GF:JTW:pr

Enclosures

c: Chief Executive Office (Rita Robinson)  
County Counsel  
Executive Office

**AGREEMENT REGARDING THE  
CONSTRUCTION, OPERATION, AND MAINTENANCE  
OF A BOX CULVERT STRUCTURE ON RUBIO WASH**

This Agreement is made and entered into this 5th day of November, 2014, by and between **Union Pacific Railroad Company**, a Delaware corporation, (hereinafter “UPRR”), the **County of Los Angeles** and the **Los Angeles County Flood Control District**, political subdivisions of the State of California, (hereinafter referred to respectively as “County” and “District”), and the **ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY** (hereinafter referred to as “ACE”), with respect to the following recitals:

**RECITALS**

A. In 1931, the Southern Pacific Railroad and the Southern Pacific Company (jointly the “**Railroad**”) entered into an agreement with the District under which District was granted the right to construct, maintain and use, at District’s sole cost and expense, a structure to contain and channel the waters of Rubio Wash across the right of way and beneath tracks owned or controlled by the Railroad in San Gabriel, California (hereinafter the “**Rubio Wash Agreement**”). In 1996, UPRR became the successor-in-interest to the Railroad’s rights and obligations under the Rubio Wash Agreement through a merger between UPRR and the Southern Pacific Transportation Company.

B. Effective June 21, 2011, UPRR, the City of San Gabriel, California, and ACE entered into that certain Agreement regarding the Construction, Operation and Maintenance of the San Gabriel Trench Grade-Separation Project (hereinafter the “**COM Agreement**”) under which the respective parties agreed to the construction, operation, and maintenance of an approximate 2.25 mile below-grade trench and associated grade separations at the existing rail crossings at Ramona Street, Mission Road, Del Mar Avenue, and San Gabriel Boulevard, at grade improvements at Walnut Grove Avenue, and other related improvements (hereinafter the “**San Gabriel Trench Project**”). A portion of the structure for Rubio Wash across UPRR’s easement, as identified in and whose construction, operation, and maintenance is controlled by the Rubio Wash Agreement, will be replaced at ACE’s cost by a box culvert structure as part of the construction of the San Gabriel Trench Project.

C. Under the terms of the COM Agreement, UPRR will be responsible, at its sole cost and expense, for all maintenance, repair, replacement, and improvements of the culvert box structure for Rubio Wash (specifically excluding operation and removal of trash and debris and graffiti abatement) after acceptance of the San Gabriel Trench Project as set forth in Section 4.20 of the COM Agreement.

D. Effective October 9, 2012, County, District, and ACE entered into that certain Agreement regarding the Design and Construction of the San Gabriel Trench by the ACE on behalf of the County of Los Angeles and the Los Angeles County Flood Control District (hereinafter the “**ACE/County Agreement**”) under which ACE agreed to undertake all work necessary for the design and construction of certain infrastructure facilities including storm drains, roadways and

sanitary sewers within the jurisdiction of County and District and associated with the San Gabriel Trench Project and County and District agreed to accept maintenance responsibilities for such infrastructure facilities constructed by ACE.

E. The parties now wish to enter this agreement to describe their rights and responsibilities among one another for the construction, operation, and maintenance of Rubio Wash.

### **AGREEMENT**

The parties agree as follows:

1. In accordance with Article 4 of the Rubio Wash Agreement, County and District will operate the water channel associated with the box culvert structure for the Rubio Wash, specifically including the removal of trash, trees, debris, or other floating material, so as to prevent the backup, percolation, retardation or flooding of water, as modified or constructed by ACE as part of the San Gabriel Trench Project, after it is accepted by County and District in accordance with the terms of the ACE/County Agreement.
2. Notwithstanding any terms to the contrary in the Rubio Wash Agreement, UPRR will be solely responsible for all maintenance, repair, replacement, and improvements (specifically excluding operation and removal of trash and debris and graffiti abatement) to the box culvert structure for Rubio Wash after it is replaced by ACE as part of the San Gabriel Trench Project and accepted by UPRR in accordance with the terms of the COM Agreement. The responsibility and provision of structural maintenance by UPRR shall not constitute an abandonment of the rights granted to the District pursuant to Articles 1 and 12 of the Rubio Wash Agreement, nor shall it constitute a default pursuant to Article 13 of the Rubio Wash Agreement.
3. All other terms of the Rubio Wash Agreement shall remain in effect.
4. Any communication, notice or demand of any kind whatsoever which any party may desire to give or serve upon another must be in writing and delivered by personal service, including express or courier service, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

County or District:

Mr. Patrick V. DeChellis  
Deputy Director of Public Works  
County of Los Angeles  
Department of Public Works  
900 South Fremont Avenue  
Alhambra, CA 91803  
Telephone: (626) 458-4004

UPRR:

Union Pacific Railroad Company  
1400 Douglas St.  
Omaha, Nebraska 68179  
Attn: AVP Engineering – Design and Construction  
Telephone: (402) 544-5000

ACE:

Mr. Mark Christoffels  
Chief Executive Officer  
Alameda Corridor-East Construction Authority  
4900 Rivergrade Road  
Suite A120  
Irwindale, CA 91706

5. Except on subjects preempted by federal law, this agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR because of its status as a common carrier regulated by the federal government. Venue for any lawsuit arising between the parties in relation to this agreement will be in the Superior Court of Los Angeles County, California or the Federal Court of the Central District of California. The parties hereby waive any defenses based upon venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit filed in accordance with this Section.

6. This agreement cannot be modified or amended in any way except in writing, signed by the parties.

7. Any waiver, modification, consent, or acquiescence with respect to any provision of this agreement must be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder will be deemed a waiver of any other subsequent breach.

8. This agreement will be binding upon and inure to the benefit of each of the parties and to their respective transferees, successors, and assigns. No party may assign its rights or obligations under this agreement to a third party without the written consent of the other parties, except where assignment occurs as a result of a sale or transfer of all or substantially all of a party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

9. **Indemnification by ACE.** ACE will indemnify, defend, and hold harmless UPRR, County, District, and their boards, officers, agents, employees, assigns, and successors in interest from and against all fines, claims, lawsuits, judgments, awards, liabilities, losses, damages, and expenses, including but not limited to attorney fees (both in-house and outside counsel) and costs (including all actual litigation costs incurred by UPRR, County, District, including but not limited to costs of experts and consultants) (collectively "**Claims**") for injury or death to all persons, including UPRR's, ACE's, County, and District employees and representatives, and for loss or damage to property belonging to any person or entity, occurring by reason of any acts or omissions of ACE or others acting in its behalf in connection with construction and maintenance

of Rubio Wash or any other activity for which ACE is responsible under the terms of this Agreement. To the extent that it may lawfully do so, and as among ACE, UPRR, County, and District only, ACE waives any and all defenses under workers' compensation and industrial insurance acts and the California Tort Claims Act to so indemnify UPRR, County, and District.

10. **Indemnification by UPRR.** UPRR will indemnify, defend, and hold harmless ACE, County, District, and their boards, officers, agents, employees, assigns, and successors in interest from and against all Claims for injury or death to all persons, including UPRR's, ACE's, County's, and District's employees and representatives, and for loss or damage to property belonging to any person or entity occurring by reason of any acts or omissions of UPRR or others acting in its behalf in connection with construction and maintenance of the Rubio Wash. To the extent that it may lawfully do so, and as among UPRR, ACE, County, and District only, UPRR waives any and all defenses under workers' compensation and industrial insurance acts and the California Tort Claims Act to so indemnify ACE, County, and District. Nothing in this Agreement limits the ability of UPRR to seek indemnification from third-party rail operators or affects the terms of current or future contracts with third-party rail operators who may use the Rubio Wash.

11. **Indemnification by County and District.** County and District will indemnify, defend, and hold harmless UPRR, ACE, and their boards, officers, agents, employees, assigns, and successors in interest from and against all Claims for injury or death to all persons, including UPRR's, ACE's, County's, and District's employees and representatives, and for loss or damage to property belonging to any person or entity occurring by reason of any acts or omissions of County or District or others acting in their behalf in connection with County's and District's activities on the Project, including but not limited to their construction and maintenance obligations of the Rubio Wash. To the extent that they may lawfully do so, and as among UPRR, ACE, County, and District only, County and District waive any and all defenses under workers' compensation and industrial insurance acts and the California Tort Claims Act to so indemnify UPRR and ACE.

12. There are no third-party beneficiaries to this agreement.

13. This agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which, taken together, will constitute the same agreement. Executed documents delivered electronically will be accepted as if they were originals, but the deliverer of such documents will deliver originals as soon thereafter as reasonably practicable.

*[Signature Pages Follow]*



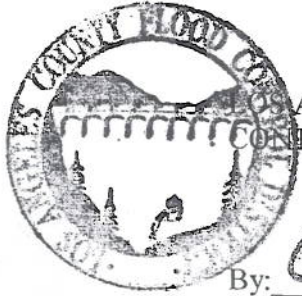
The parties have executed this agreement effective on the date first written above.

COUNTY OF LOS ANGELES

UNION PACIFIC RAILROAD COMPANY

By: *Don Krabe*  
Chairman of Board of Supervisors

By: *John Hovanec*  
John Hovanec  
AVP Engineering – Design and  
Construction



By: *Don Krabe*  
Chairman Los Angeles County  
Flood Control District

Approved as to form:

By: *David M. Pickett*  
David M. Pickett  
General Attorney, UPRR

APPROVED AS TO FORM:

MARK J. SALADINO  
County Counsel

By: *Carole Suzuki for*  
Deputy *Michael Moore*

ALAMEDA CORRIDOR-EAST  
CONSTRUCTION AUTHORITY

By: *Michael Moore*

Approved as to form:

By: *Carole Suzuki*  
General Counsel

ATTEST: SACHIA A. HAMAI  
EXECUTIVE OFFICER  
CLERK OF THE BOARD OF SUPERVISORS

By: *Carla Little*, Deputy



I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHIA A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: *Carla Little*  
Deputy

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

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NOV 05 2014

*Sachia A. Hamai*  
SACHIA A. HAMAI  
EXECUTIVE OFFICER